

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Appeal From Order No. 1625 Of 2001
(Old No. FAFO 430 of 1990)

The New India Assurance Company Ltd.,
Haldwani.

... **Appellant.**

Versus

1. Smt. Kiran Singh widow of Late Rajesh Singh,
2. Km. Gargi minor daughter of late Rajesh Singh,
Under the guardianship of her mother and natural guardian,
Smt. Kiran Singh.
Both residents of village Mai, Post Khadiri Ganj, District
Gazipur. (Claimants)
3. Smt. Kanta Devi w/o Sri Lakhan Singh, R/O Rampur Road,
Haldwani, District Nainital.
4. Sri Pramod Chandra Singh S/O Sri Harnam Singh,
R/O Roopnagar, Haldwani, District Nainital.

...**Respondents.**

Sri Rajesh Joshi, holding brief of Sri T.A.Khan, Advocate, learned counsel for
the appellant.
None appeared for the respondents.

Date June 06, 2006.

PC: Hon'ble B.S. Verma, J.

This appeal under Section 110-D of Motor Vehicles Act, 1939 (***for short the Act***) is directed against the judgment and award dated 14-2-1990, passed by the Motor Accident Claims Tribunal/III Addl. District Judge, Nainital (***for short the Tribunal***), in M.A.C. Petition No. 47 of 1988, Smt. Kiran Singh and another Vs. Smt. Kanta Devi and others, whereby the learned Tribunal has awarded compensation of Rs. 15,000/- along with interest @ 10% per annum in favour of the claimants under Section 92-A of the Act as against the Insurance Company-appellant.

At the outset, it may be mentioned that the award of interim compensation on the principle of "no fault liability" under Section 92-A of Act is subject to adjustment in the final award to be passed in the main claim petition under the provisions of Section 110-A of the Act. This fact has been fairly conceded by the learned counsel for the appellant.

Relevant facts of the case are that on 10-1-1988, on Haldwani-Almora motor road near place Khairna a motor accident took place involving Bus No. U.R.N.-9428 and due to which the bus fell in a ravine and caught fire, with the result several passengers including Rajesh Singh, husband of the claimant Kiran Singh died.

According to the claimant, the accident occurred due to rash and negligent driving by the driver of the illfated bus, which was owned by Smt. Kanta Devi and run by K.M.O.U. Ltd. and was duly insured with the appellant.

The owner of the vehicle in her written statement admitted the accident, but denied that it was being driven rashly and negligently by its driver. Insurance of the vehicle was admitted. It was asserted that the compensation is payable by the Insurance Company. Insurance Company-appellant in its written statement asserted that that the vehicle was given under the control of Promod Chandra Singh, O.P.No.4, as per agreement and since policy conditions were violated, therefore, the insurance company is not liable to pay compensation.

On the pleadings of the parties, necessary issues were framed by the learned Tribunal and after perusing the material on record, the learned Tribunal allowed the petition under Section 92-A of the Act and awarded a sum of Rs. 15,000/- in favour of the claimants under Section 92-A of the Act along with interest @ 10% per annum from the date of filing of claim petition till payment. The liability to pay compensation was fastened on the Insurance Company.

Since the amount of interim compensation on the principle of no fault liability is subject to adjustment in the final award on merits of the case and it is open to the insurer to seek

redressal of its grievance subject to the final decision of the claim petition under Section 110-A of the Act by the Tribunal.

Accordingly, the appeal deserves to be dismissed and is hereby dismissed. No orders as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondents.

(B.S.Verma, J.)

RCP